

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 291

Introduced by Assembly Member Wieckowski

February 8, 2011

~~An act to amend Section 25503.5 of the Health and Safety Code, relating to hazardous materials. An act to amend Section 25299.52 of the Health and Safety Code, relating to underground storage tanks.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 291, as amended, Wieckowski. ~~Hazardous materials: business plans. Underground storage tanks: petroleum: corrective action claims.~~

Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, every owner of an underground storage tank is required to pay a storage fee for each gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund and the State Water Resources Control Board is authorized to expend the moneys in the fund, upon appropriation by the Legislature, for various purposes, including the payment of claims to aid owners and operators of petroleum underground storage tanks who take corrective action to clean up unauthorized releases from those tanks. The board is required to award the claims in accordance with a specified priority ranking, which provides for 4 categories of priority.

This bill would require the board to allocate 25 percent of the funds authorized to be expended for claims filed for the 2nd and 3rd priority rankings based upon the environmental risk priority of the claims.

~~(1) Existing law requires a business that handles a hazardous material to adopt a business plan for response to the release of hazardous~~

materials, and to annually submit an inventory to the local administering agency if the business handles a specified amount of hazardous materials at any one time during the reporting year.

~~This bill would additionally require a business to adopt the plan or inventory for specified lesser or greater amounts of various classes of hazardous materials if the hazardous materials meets certain requirements. The administering agency would be required to make findings regarding the regulation of certain of these hazardous materials in consultation with the local fire chief. The bill would impose a state-mandated local program by imposing new duties upon administering agencies with regard to business plans.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25299.52 of the Health and Safety Code
- 2 is amended to read:
- 3 25299.52. (a) The board shall adopt a priority ranking list at
- 4 least annually for awarding claims pursuant to Section 25299.57
- 5 or 25299.58. Any owner or operator eligible for payment of a claim
- 6 pursuant to Section 25299.54 shall file an application with the
- 7 board within a reasonable period, to be determined by the board,
- 8 prior to adoption of the priority ranking list.
- 9 (b) Except as provided in subdivision (c), in awarding claims
- 10 pursuant to Section 25299.57 or 25299.58, the board shall pay
- 11 claims in accordance with the following order of priority:
- 12 (1) Owners of tanks who are eligible to file a claim pursuant to
- 13 subdivision (e) of Section 25299.54.
- 14 (2) (A) Owners and operators of tanks that are either of the
- 15 following:
- 16 (A)
- 17 (i) An owner or operator of a tank that is a small business, by
- 18 meeting the requirements of subdivision (d) of Section 14837 of
- 19 the Government Code. An owner or operator that meets that

definition of small business, but who is domiciled or has its principal office outside of the state, shall be classified in this category if the owner or operator otherwise meets the requirements of subdivision (d) of Section 14837 of the Government Code with regard to the number of employees and the total annual revenues received.

~~(B)~~

(ii) An owner or operator that is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars (\$7,000,000). In determining the amount of a nonprofit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located.

(B) The board shall rank the environmental risk priority for purposes of paragraph (3) of subdivision (c) of the claims that are subject to this paragraph.

(3) (A) Owners or operators of tanks that are either of the following:

~~(A)~~

(i) The owner or operator owns and operates a business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

~~(B)~~

(ii) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, the board shall calculate only those employees employed at the particular site at which a tank for which the claim is being submitted is located.

(B) The board shall rank the environmental risk priority for purposes of paragraph (3) of subdivision (c) of the claims subject to this paragraph.

(4) All other tank owners and operators.

(c) (1) ~~In any year~~ *Except as provided in paragraph (3), in any year* in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking

1 list award limitations set forth in subdivision (b), the board shall
2 allocate between 14 and 16 percent of the total amount of funds
3 committed for that year to each category that is not otherwise
4 entitled to at least that level of committed funding for that year.

5 (2) If the total amount of claims outstanding in one or more of
6 the priority categories specified in paragraph (3) or (4) of
7 subdivision (b) is less than 15 percent of the total amount annually
8 appropriated from the fund for the purpose of awarding claims,
9 the board shall reserve for making claims in that category only the
10 amount that is necessary to satisfy the outstanding claims in that
11 category.

12 (3) *Notwithstanding paragraphs (1) and (2), the board shall*
13 *annually allocate 25 percent of the total amount of funds committed*
14 *for that year for claims filed pursuant to Section 25299.57 by*
15 *owners and operators in the categories set forth in paragraphs*
16 *(2) and (3) of subdivision (b) based upon the environmental risk*
17 *priority of the claim.*

18 (d) The board shall give priority to a claim that is filed before
19 September 24, 1993, by a city, county, or district that is eligible
20 for payment pursuant to Section 25299.54 in the following manner:

21 (1) The board shall determine whether the priority category
22 specified for a city, county, or district pursuant to subparagraph
23 (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph
24 (3), of subdivision (b) requires that the priority ranking of the claim
25 be changed.

26 (2) If the priority ranking of the claim is changed and the claim
27 is placed into either the priority category specified in subparagraph
28 (B) of paragraph (2), or specified in subparagraph (B) of paragraph
29 (3), of subdivision (b), the board shall pay all other claims that
30 were assigned to that priority category prior to January 1, 2000,
31 before paying the claim of the city, county, or district.

32 (e) The board may, to carry out the intent specified in paragraph
33 (1) of subdivision (b) of Section 25299.10 and to expedite the
34 processing and awarding of claims pursuant to Sections 25299.57
35 and 25299.58, implement the contracting procedures required by
36 Chapter 10 (commencing with Section 4525) of Division 5 of Title
37 1 of the Government Code, as may be necessary, to alleviate the
38 claims processing and award backlog. If, at the conclusion of any
39 fiscal year, 25 percent or more of the funds appropriated annually
40 for awards to claimants during that year have not actually been

1 obligated by the board, the board shall, at its next regularly
2 scheduled meeting, determine, in a public hearing, whether, given
3 the circumstances of the awards backlog, it is appropriate to
4 implement those contracting procedures for some, or all, of the
5 claims filed with the board.

6 (f) For purposes of this section, the following definitions shall
7 apply:

8 (1) "Nonprofit organization" means a nonprofit public benefit
9 organization incorporated pursuant to Part 2 (commencing with
10 Section 5110) of Division 2 of Title 1 of the Corporations Code.

11 (2) "Annual revenue," with respect to public entities, means the
12 total annual general purpose revenues, excluding all restricted
13 revenues over which the governing agency has no discretion, as
14 reported in the Annual Report of Financial Transactions submitted
15 to the Controller, for the latest fiscal year ending prior to the date
16 the fund application was filed.

17 (3) "Annual revenue," with respect to nonprofit organizations,
18 means the total annual revenues, as shown in an annual fiscal report
19 filed with the Registry of Charitable Trusts of state and federal tax
20 records, based on the latest fiscal year ending prior to the date the
21 fund application was filed.

22 (4) "General purpose revenues," as used in paragraph (2), means
23 revenues consisting of all of the following: secured and unsecured
24 revenues; less than countywide funds, secured and unsecured; prior
25 year secured and unsecured penalties and delinquent taxes; sales
26 and use taxes; transportation taxes (nontransit); property transfer
27 taxes; transient lodging taxes; timber yield taxes; aircraft taxes;
28 franchise taxes; fines, forfeitures, and penalties; revenues from
29 use of money and property; motor vehicle in-lieu taxes; trailer
30 coach in-lieu taxes; homeowner property tax relief; open-space
31 tax relief; and cigarette taxes.

32 ~~SECTION 1. Section 25503.5 of the Health and Safety Code~~
33 ~~is amended to read:~~

34 ~~25503.5. (a) (1) A business, except as provided in subdivisions~~
35 ~~(b), (c), and (d), shall establish and implement a business plan for~~
36 ~~emergency response to a release or threatened release of a~~
37 ~~hazardous material in accordance with the standards prescribed in~~
38 ~~the regulations adopted pursuant to Section 25503, if the business~~
39 ~~handles a hazardous material or a mixture containing a hazardous~~

1 material that has a quantity at any one time during the reporting
2 year that is any of the following:

3 (A) Except as provided in subparagraphs (B) to (E), inclusive,
4 equal to, or greater than, a total weight of 500 pounds or a total
5 volume of 55 gallons.

6 (B) The threshold planning quantity, under both of the following
7 conditions:

8 (i) The hazardous material is an extremely hazardous substance;
9 as defined in Section 355.61 of Title 40 of the Code of Federal
10 Regulations.

11 (ii) The threshold planning quantity for that extremely hazardous
12 substance listed in Appendices A and B of Part 355 (commencing
13 with Section 355.1) of Subchapter J of Chapter I of Title 40 of the
14 Code of Federal Regulations is less than 500 pounds.

15 (C) A total weight of 10,000 pounds, if the hazardous material
16 is a solid or liquid substance that is classified as a hazard for
17 purposes of Section 5194 of Title 8 of the California Code of
18 Regulations solely as an irritant or sensitizer, unless the
19 administering agency finds, and provides notice to the business
20 handling the product, that the handling of lesser quantities of that
21 hazardous material requires the submission of a business plan, or
22 any portion thereof, in response to public health, safety, or
23 environmental concerns.

24 (D) (i) A total of 6,000 cubic feet, if the hazardous material is
25 a gas at standard temperature and pressure and is classified as a
26 hazard for the purposes of Section 5194 of Title 8 of the California
27 Code of Regulations solely as a compressed gas, unless the
28 administering agency finds, and provides notice to the business
29 handling the product, that the handling of lesser quantities of that
30 hazardous material requires the submission of a business plan, or
31 any portion thereof, in response to public health, safety, or
32 environmental concerns.

33 (ii) The hazardous materials subject to this subparagraph include
34 a gas for which the only health and physical hazards are simple
35 asphyxiation and the release of pressure.

36 (iii) The hazardous materials subject to this subparagraph do
37 not include gases in a cryogenic state.

38 (E) If the substance is a radioactive material, it is handled in
39 quantities for which an emergency plan is required to be adopted
40 pursuant to Part 30 (commencing with Section 30.1), Part 40

1 ~~(commencing with Section 40.1), or Part 70 (commencing with~~
2 ~~Section 70.1), of Chapter 1 of Title 10 of the Code of Federal~~
3 ~~Regulations, or pursuant to any regulations adopted by the state~~
4 ~~in accordance with those regulations.~~

5 (2) ~~In meeting the requirements of this subdivision, a business~~
6 ~~may, if it elects to do so, use the format adopted pursuant to Section~~
7 ~~25503.4.~~

8 (3) ~~The administering agency shall make the findings required~~
9 ~~by subparagraphs (C) and (D) of paragraph (1) in consultation with~~
10 ~~the local fire chief.~~

11 (b) ~~(1) Oxygen, nitrogen, and nitrous oxide, ordinarily~~
12 ~~maintained by a physician, dentist, podiatrist, veterinarian, or~~
13 ~~pharmacist, at his or her office or place of business, stored at each~~
14 ~~office or place of business in quantities of not more than 1,000~~
15 ~~cubic feet of each material at any one time, are exempt from this~~
16 ~~section and from Section 25505. The administering agency may~~
17 ~~require a one-time inventory of these materials for a fee not to~~
18 ~~exceed fifty dollars (\$50) to pay for the costs incurred by the~~
19 ~~agency in processing the inventory forms.~~

20 (2) ~~(A) Lubricating oil is exempt from this section and Sections~~
21 ~~25505 and 25509, for a single business facility, if the total volume~~
22 ~~of each type of lubricating oil handled at that facility does not~~
23 ~~exceed 55 gallons and the total volume of all types of lubricating~~
24 ~~oil handled at that facility does not exceed 275 gallons, at any one~~
25 ~~time.~~

26 (B) ~~For purposes of this paragraph, "lubricating oil" means any~~
27 ~~oil intended for use in an internal combustion crankcase, or the~~
28 ~~transmission, gearbox, differential, or hydraulic system of an~~
29 ~~automobile, bus, truck, vessel, airplane, heavy equipment, or other~~
30 ~~machinery powered by an internal combustion or electric powered~~
31 ~~engine. "Lubricating oil" does not include used oil, as defined in~~
32 ~~subdivision (a) of Section 25250.1.~~

33 (c) ~~(1) Hazardous material contained solely in a consumer~~
34 ~~product for direct distribution to, and use by, the general public is~~
35 ~~exempt from the business plan requirements of this article unless~~
36 ~~the administering agency has found, and has provided notice to~~
37 ~~the business handling the product, that the handling of certain~~
38 ~~quantities of the product requires the submission of a business~~
39 ~~plan, or any portion thereof, in response to public health, safety,~~
40 ~~or environmental concerns.~~

~~(2) In addition to the authority specified in paragraph (4), the administering agency may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this article any hazardous substance specified in subdivision (q) of Section 25501 if the administering agency finds that the hazardous substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The administering agency shall specify in writing the basis for granting any exemption under this paragraph. The administering agency shall send a notice to the agency within five days from the effective date of any exemption granted pursuant to this paragraph.~~

~~(3) The administering agency, upon application by a handler, may exempt the handler, under conditions that the administering agency determines to be proper, from any portion of the business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph.~~

~~(4) The administering agency, upon application by a handler, may exempt a hazardous material from the inventory provisions of this article upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The administering agency shall specify in writing the basis for any exemption under this paragraph.~~

~~(5) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information in the business plan required by subdivisions (b) and (c) of Section 25504 if all of the following requirements are met:~~

~~(A) The handler annually provides the inventory of information required by Section 25509 to the county agricultural commissioner before January 1 of each year.~~

~~(B) Each building in which hazardous materials subject to this article are stored is posted with signs, in accordance with~~

1 regulations that the agency shall adopt, that provide notice of the
2 storage of any of the following:

3 (i) Pesticides.

4 (ii) Petroleum fuels and oil.

5 (iii) Types of fertilizers.

6 (C) Each county agricultural commissioner forwards the
7 inventory to the administering agency within 30 days from the
8 date of receipt of the inventory.

9 (6) The administering agency shall exempt a business operating
10 an unstaffed remote facility located in an isolated sparsely
11 populated area from the hazardous materials business plan and
12 inventory requirements of this article if the facility is not otherwise
13 subject to the requirements of applicable federal law, and all of
14 the following requirements are met:

15 (A) The types and quantities of materials onsite are limited to
16 one or more of the following:

17 (i) Five hundred standard cubic feet of compressed inert gases
18 (asphyxiation and pressure hazards only).

19 (ii) Five hundred gallons of combustible liquid used as a fuel
20 source.

21 (iii) Two hundred gallons of corrosive liquids used as
22 electrolytes in closed containers.

23 (iv) Five hundred gallons of lubricating and hydraulic fluids.

24 (v) One thousand two hundred gallons of flammable gas used
25 as a fuel source.

26 (B) The facility is secured and not accessible to the public.

27 (C) Warning signs are posted and maintained for hazardous
28 materials pursuant to the California Fire Code.

29 (D) A one-time notification and inventory are provided to the
30 administering agency along with a processing fee in lieu of the
31 existing fee. The fee shall not exceed the actual cost of processing
32 the notification and inventory, including a verification inspection,
33 if necessary.

34 (E) If the information contained in the initial notification or
35 inventory changes and the time period of the change is longer than
36 30 days, the notification or inventory shall be resubmitted within
37 30 days to the administering agency to reflect the change, along
38 with a processing fee, in lieu of the existing fee, that does not
39 exceed the actual cost of processing the amended notification or
40 inventory, including a verification inspection, if necessary.

1 ~~(F) The administering agency shall forward a copy of the~~
2 ~~notification and inventory to those agencies that share responsibility~~
3 ~~for emergency response.~~

4 ~~(G) The administering agency may require an unstaffed remote~~
5 ~~facility to submit a hazardous materials business plan and inventory~~
6 ~~in accordance with this article if the agency finds that special~~
7 ~~circumstances exist such that development and maintenance of the~~
8 ~~business plan and inventory are necessary to protect public health~~
9 ~~and safety and the environment.~~

10 ~~(d) On-premise use, storage, or both, of propane in an amount~~
11 ~~not to exceed 300 gallons that is for the sole purpose of heating~~
12 ~~the employee working areas within that business is exempt from~~
13 ~~this section, unless the administering agency finds, and provides~~
14 ~~notice to the business handling the propane, that the handling of~~
15 ~~the on-premise propane requires the submission of a business plan,~~
16 ~~or any portion thereof, in response to public health, safety, or~~
17 ~~environmental concerns.~~

18 ~~(e) The administering agency shall provide all information~~
19 ~~obtained from completed inventory forms, upon request, to~~
20 ~~emergency rescue personnel on a 24-hour basis.~~

21 ~~(f) The administering agency shall adopt procedures to provide~~
22 ~~for public input when approving any applications submitted~~
23 ~~pursuant to paragraph (3) or (4) of subdivision (c).~~

24 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
25 ~~Section 6 of Article XIII B of the California Constitution because~~
26 ~~the only costs that may be incurred by a local agency or school~~
27 ~~district will be incurred because this act creates a new crime or~~
28 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
29 ~~for a crime or infraction, within the meaning of Section 17556 of~~
30 ~~the Government Code, or changes the definition of a crime within~~
31 ~~the meaning of Section 6 of Article XIII B of the California~~
32 ~~Constitution.~~